

110TH CONGRESS  
2D SESSION

# H. R. 6329

To expedite the construction of new refining capacity on brownfield sites  
in the United States, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 20, 2008

Mrs. CUBIN introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To expedite the construction of new refining capacity on  
brownfield sites in the United States, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. DEFINITIONS.**

4       For purposes of this Act—

5               (1) the term “brownfield site” has the meaning  
6       given that term in section 101 of the Comprehensive  
7       Environmental Response, Compensation, and Liabil-  
8       ity Act of 1980 (42 U.S.C. 9601);

1           (2) the term “designated refinery” means a re-  
2       finery designated under section 2(a);

3           (3) the term “Federal refinery authorization”—

4               (A) means any authorization required  
5       under Federal law, whether administered by a  
6       Federal or State administrative agency or offi-  
7       cial, with respect to siting, construction, expan-  
8       sion, or operation of a refinery; and

9               (B) includes any permits, special use au-  
10      thorizations, certifications, opinions, or other  
11      approvals required under Federal law with re-  
12      spect to siting, construction, expansion, or oper-  
13      ation of a refinery;

14          (4) the term “refinery” means—

15               (A) a facility designed and operated to re-  
16      ceive, load, unload, store, transport, process,  
17      and refine crude oil by any chemical or physical  
18      process, including distillation, fluid catalytic  
19      cracking, hydrocracking, coking, alkylation,  
20      etherification, polymerization, catalytic reform-  
21      ing, isomerization, hydrotreating, blending, and  
22      any combination thereof, in order to produce  
23      gasoline or other fuel; or

24               (B) a facility designed and operated to re-  
25      ceive, load, unload, store, transport, process,

1           and refine coal by any chemical or physical  
2           process, including liquefaction, in order to  
3           produce gasoline, diesel, or other liquid fuel as  
4           its primary output;

5           (5) the term “Secretary” means the Secretary  
6           of Energy; and

7           (6) the term “State” means a State, the Dis-  
8           trict of Columbia, the Commonwealth of Puerto  
9           Rico, and any other territory or possession of the  
10          United States.

11 **SEC. 2. STATE PARTICIPATION AND SECRETARY’S DESIGNA-**  
12 **TION.**

13          (a) DESIGNATION REQUIREMENT.—Not later than  
14 90 days after the date of enactment of this Act, the Sec-  
15 retary shall designate no less than 5 brownfield sites, or  
16 portions thereof, subject to subsection (c)(2), that are ap-  
17 propriate and available for the purposes of siting a refin-  
18 ery.

19          (b) ANALYSIS OF REFINERY SITES.—In considering  
20 any site for possible designation under subsection (a), the  
21 Secretary shall conduct an analysis of—

22           (1) the availability of crude oil supplies to the  
23           site, including supplies from domestic production of  
24           shale oil and tar sands and other strategic uncon-  
25           ventional fuels;

1           (2) the distribution of the Nation's refined pe-  
2       troleum product demand;

3           (3) whether such site is in close proximity to  
4       substantial pipeline infrastructure, including both  
5       crude oil and refined petroleum product pipelines,  
6       and potential infrastructure feasibility;

7           (4) the need to diversify the geographical loca-  
8       tion of the domestic refining capacity;

9           (5) the effect that increased refined petroleum  
10      products from a refinery on that site may have on  
11      the price and supply of gasoline to consumers; and

12          (6) such other factors as the Secretary con-  
13      siders appropriate.

14      (c) MAKING DESIGNATED SITES AVAILABLE.—

15          (1) SECRETARY'S ROLE.—If a designated site is  
16      owned by the Federal Government, the Secretary  
17      shall take appropriate actions to make the site avail-  
18      able for the construction of a refinery. If the site is  
19      not owned by the Federal Government, the Secretary  
20      shall facilitate the necessary transfer of interest in  
21      the site from a willing seller to enable the construc-  
22      tion of a refinery on the site.

23          (2) GOVERNOR'S OBJECTION.—No site may be  
24      used for a refinery under this Act if, not later than  
25      60 days after designation of the site under sub-

1 section (a), the Governor of the State in which the  
2 site is located transmits to the Secretary an objec-  
3 tion to the designation, unless, not later than 60  
4 days after the Secretary receives such objection, the  
5 Congress has by law overridden the objection.

6 **SEC. 3. PROCESS COORDINATION AND RULES OF PROCE-**  
7 **DURE.**

8 (a) DESIGNATION AS LEAD AGENCY.—

9 (1) IN GENERAL.—The Department of Energy  
10 shall act as the lead agency for the purposes of co-  
11 ordinating all applicable Federal refinery authoriza-  
12 tions and related environmental reviews with respect  
13 to a designated refinery.

14 (2) OTHER AGENCIES.—Each Federal and  
15 State agency or official required to provide a Fed-  
16 eral refinery authorization shall cooperate with the  
17 Secretary and comply with the deadlines established  
18 by the Secretary.

19 (b) SCHEDULE.—

20 (1) SECRETARY'S AUTHORITY TO SET SCHED-  
21 ULE.—The Secretary shall establish a schedule for  
22 all Federal refinery authorizations with respect to a  
23 designated refinery. In establishing the schedule, the  
24 Secretary shall—

1 (A) ensure expeditious completion of all  
2 such proceedings; and

3 (B) accommodate the applicable schedules  
4 established by Federal law for such proceedings.

5 (2) FAILURE TO MEET SCHEDULE.—If a Fed-  
6 eral or State administrative agency or official does  
7 not complete a proceeding for an approval that is re-  
8 quired for a Federal refinery authorization in ac-  
9 cordance with the schedule established by the Sec-  
10 retary under this subsection, the applicant may pur-  
11 sue remedies under subsection (d).

12 (c) CONSOLIDATED RECORD.—The Secretary shall,  
13 with the cooperation of Federal and State administrative  
14 agencies and officials, maintain a complete consolidated  
15 record of all decisions made or actions taken by the Sec-  
16 retary or by a Federal administrative agency or officer (or  
17 State administrative agency or officer acting under dele-  
18 gated Federal authority) with respect to any Federal re-  
19 finery authorization. Such record shall be the record for  
20 judicial review under subsection (d) of decisions made or  
21 actions taken by Federal and State administrative agen-  
22 cies and officials, except that, if the Court determines that  
23 the record does not contain sufficient information, the  
24 Court may remand the proceeding to the Secretary for fur-  
25 ther development of the consolidated record.

1 (d) JUDICIAL REVIEW.—

2 (1) IN GENERAL.—The United States Court of  
3 Appeals for the District of Columbia shall have  
4 original and exclusive jurisdiction over any civil ac-  
5 tion for the review of—

6 (A) an order or action, related to a Federal  
7 refinery authorization, by a Federal or State  
8 administrative agency or official; and

9 (B) an alleged failure to act by a Federal  
10 or State administrative agency or official acting  
11 pursuant to a Federal refinery authorization.

12 The failure of an agency or official to act on a Fed-  
13 eral refinery authorization in accordance with the  
14 Secretary's schedule established pursuant to sub-  
15 section (b) shall be considered inconsistent with Fed-  
16 eral law for the purposes of paragraph (2) of this  
17 subsection.

18 (2) COURT ACTION.—If the Court finds that an  
19 order or action described in paragraph (1)(A) is in-  
20 consistent with the Federal law governing such Fed-  
21 eral refinery authorization, or that a failure to act  
22 as described in paragraph (1)(B) has occurred, and  
23 the order, action, or failure to act would prevent the  
24 siting, construction, expansion, or operation of the  
25 designated refinery, the Court shall remand the pro-

ceeding to the agency or official to take appropriate action consistent with the order of the Court. If the Court remands the order, action, or failure to act to the Federal or State administrative agency or official, the Court shall set a reasonable schedule and deadline for the agency or official to act on remand.

(3) SECRETARY'S ACTION.—For any civil action brought under this subsection, the Secretary shall promptly file with the Court the consolidated record compiled by the Secretary pursuant to subsection (c).

(4) EXPEDITED REVIEW.—The Court shall set any civil action brought under this subsection for expedited consideration.

(5) ATTORNEY'S FEES.—In any action challenging a Federal refinery authorization that has been granted, reasonable attorney's fees and other expenses of litigation shall be awarded to the prevailing party. This paragraph shall not apply to any action seeking remedies for denial of a Federal refinery authorization or failure to act on an application for a Federal refinery authorization.



1 **SEC. 4. 5-YEAR EXTENSION OF ELECTION TO EXPENSE CER-**  
2 **TAIN REFINERIES.**

3 (a) IN GENERAL.—Paragraph (1) of section 179C(c)  
4 of the Internal Revenue Code of 1986 (defining qualified  
5 refinery property) is amended—

6 (1) by striking “January 1, 2012” in subpara-  
7 graph (B) and inserting “January 1, 2017”, and

8 (2) by striking “January 1, 2008” each place  
9 it appears in subparagraph (F) and inserting “Janu-  
10 ary 1, 2013”.

11 (b) IMPLEMENTATION THROUGH SECRETARIAL  
12 GUIDANCE.—

13 (1) GUIDANCE.—Paragraph (1) of section  
14 179C(b) of such Code (relating to general rule for  
15 election) is amended by inserting “or other guid-  
16 ance” after “regulations”.

17 (2) REPORTING.—Subsection (h) of section  
18 179C of such Code (relating to reporting) is amend-  
19 ed by striking “shall require” and inserting “may,  
20 through guidance, require”.

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this Act shall apply to property placed in service after De-  
23 cember 31, 2007.

24 (d) REQUIREMENT FOR ISSUANCE OF GUIDANCE.—  
25 Not later than 90 days after the date of the enactment  
26 of this Act, the Secretary of the Treasury shall issue regu-

1 lations or other guidance to carry out section 179C of the  
2 Internal Revenue Code of 1986 (as amended by this sec-  
3 tion).

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